IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 343 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANTABEN MAGANBHAI PATEL

Versus

MHALIBEN DHULABHAI MALI

Appearance:

1. Appeal from Order No. 343 of 2000

MR CJ VIN for Petitioner No. 1

MR AJ PATEL for Respondents No. 1-20

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 18/10/2001

ORAL JUDGEMENT

The appellant-plaintiff filed the Special Civil Suit No.696/95 before the court of Civil Judge (S.D.), Baroda for specific performance of contract along with

application Ex.5 seeking injunction against the defendant in terms of para 9(i) of the application. Learned Trial Judge granted ex-parte ad-interim order and continued the same for nearly 5 years. Ultimately, after by-parte hearing the learned Trial Judge by her impugned order dated 31.8.2001 dismissed application Ex.5 of the appellant-plaintiff and vacated ex-parte ad-interim order dated 3.11.1995 granted in favour of the plaintiff. This order is challenged in this appeal. It was straightaway admitted by learned Single Judge of this court on 13.8.2000. Along with this appeal, the appellant-plaintiff has also filed Civil Application No.8228 of 2000. After hearing learned counsel for the appellant-plaintiff, learned Single Judge of this court continued the ad-interim relief granted earlier by the learned Trial Court in favour of the appellant-plaintiff on 3.11.1995 below Ex.5. The said interim order has remained in force till today.

Learned counsel Shri A.J.Patel for the respondents vehemently submitted that the appellant-plaintiff by way of para 9(B) also prayed that the respondents be restrained from making any construction or repairs over the property bearing survey No.89/4, Town Planning Scheme No.1 by way of plot No.118 admeasuring 809 sq. mtrs. situated in the city of Baroda. However, it must be stated that the said relief as prayed for in para 7(B) of the Civil Application No.8228 of 2000 was not granted and limited interim relief was granted by the learned Single Judge which was granted by the learned Trial Court on 3.11.1995. As per the said interim relief the defendant Nos. 3 and 4 or any other defendants were restrained from transferring or alienating the property in question to any one else till the final disposal of the suit.

In view of the above, both the learned counsel for the parties jointly requested the court that without going into the legality and validity of the impugned order passed by the learned trial court this appeal be disposed of with a direction to the learned trial court to decide the Special Civil Suit No.696/95 at the earliest and till then, interim relief granted earlier by this court on Civil Application No.8228 of 2000 be continued.

Accordingly, without going into the legality and validity of the impugned order passed by the learned trial Judge, this appeal is disposed of with a direction to the learned trial court to decide the Special Civil Suit No.696/95 as early as possible and not later than

31.10.2002. Parties shall fully cooperate with the final disposal of the suit. Interim relief granted earlier by this court on Civil Application No.8228 of 2000 shall continue till then.

Civil Application is disposed of in terms of the order passed in main Appeal from Order.

(B.J.Shethna, J.)

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